

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE SAINT PAUL CITY COUNCIL

In the Matter of the
FACT,
Application of the
Dext Company of
Indiana for a Food
MEMORANDUM
Salvage License

FINDINGS OF
CONCLUSIONS
RECOMMENDATION
AND

The above-entitled matter came on for hearing before Allan W. Klein, Hearing Examiner, on July 23, 1991, in St. Paul. As outlined more fully in the Memorandum, the hearing was recessed on July 24 after the parties reached a negotiated settlement which the Hearing Examiner was willing to recommend to the Council.

Appearing on behalf of the License Inspector of the City of St. Paul was Assistant City Attorney Philip B. Byrne, 647 City Hall, St. Paul, Minnesota 55102. Appearing on behalf of the Applicant herein, Dext Company of Indiana, was James J. Hanton, of the firm of Bannigan & Kelly, Attorneys at Law, 409 Midwest Federal Building, St. Paul, Minnesota 55101.

This report is a recommendation, not a final decision. The City Council will make the final decision in this matter, after its review of the record. The Council may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation contained herein. Pursuant to 310.05 of the City's Legislative Code, the Council will afford the Applicant an opportunity to present oral or written arguments to it prior to taking final action. The Applicant should contact Mr. Byrne to determine the procedures for filing such argument or appearing before the Council.

STATEMENT OF ISSUE

Should the City grant or deny the application of Dext Company of Indiana for a food salvage license?

FINDINGS OF FACT

Background of Dext Company of Indiana

1. Dext Company of Indiana is a wholly-owned subsidiary of Scope Industries. Scope Industries is headquartered in Santa Monica, California. Although Dext Company of Indiana was only formed as a separate corporation in the early 1980's, predecessors operating under the name of Dext have been in business since the 1930's. Dext is in the business of manufacturing animal food from waste bread dough and other waste bakery products, both baked and unbaked

2. Dext Company of Indiana, along with other subsidiaries of Scope Industries, operates in 15 locations around the United States. In nine of the

locations, there is a remote collection depot, similar to what is proposed for St. Paul. In the other six locations, there is both a collection depot and a processing plant. The nearest processing plant to St. Paul is in the Chicago area, and that is where the actual mixing, drying and packaging of the product occurs. The remote depots, such as the one proposed for St. Paul, are essentially collection points and transfer stations. Bread dough and other bakery products are picked up from bakeries in the Twin Cities area by Dext trucks that look somewhat like garbage trucks. These trucks bring the product to the Dext depot, which is located on the corner of Arundel and Topping Streets. The truck backs into the building and dumps its load in a containment area on the floor. The load is then compressed with a front-end loader. Every weekday night (with a few exceptions), a semi-trailer is loaded with product and taken to Chicago.

3. Dext bills itself as a pioneer in the business of "bakery and snack food waste evacuation service systems". It contracts with firms such as Nabisco, Frito-Lay, Pillsbury Company, General Mills, Continental Baking, and others. Exs. 36 and 37. In the Twin Cities area, Dext has entered into contracts with McGlynn Bakeries headquartered in Chanhassen, Metz/Tastee in St. Paul, Metz/Roseville, and Pies, Inc. of Chaska. Exs. 18-20 (some of the details of these contracts are covered by a Protective Order, but the names are public). Dext estimates that the Twin Cities area produces between 700 and 1,000 tons per week of waste products that could be used in Dext feed. Currently, however, Dext only has contracts for between 150 and 200 tons per week. Along with bread dough, pastry dough, flour and other baking ingredients, Dext also takes over-cooked bakery products, stale bakery products, and similar material. All of the material currently handled by Dext, as well as all of the material Dext intends to handle at the St. Paul depot, is material destined for animal food, not human consumption.

Disposal of Waste Bakery Products

4. Dext sells itself to bakeries as providing a waste removal service. The thrust of its promotional material (Ex. 36 and 37) is that Dext provides a consistent, reliable method of waste food evacuation from your facilities. Reduce operating costs by removing products which [you] may be paying to dispose of as refuse." Although Dext does pay the bakeries for the product,

the thrust of the promotional material is not so much Dext's willingness to pay, but rather Dext's willingness to remove the product and save the bakery from having to pay disposal costs. At the current time, Dext does not have any substantial competition in the Twin Cities area. There is only one other operator, substantially smaller, who performs part of what Dext does. Individual bakeries, principally smaller ones, have entered into agreements with farmers whereby the farmers take the waste product to feed to their animals. However, Dext does not have any local competition for the large scale "total service" concept which it is offering its customers. The way that Dext first began to look at St. Paul and the Twin Cities area as a potential market is that it was already doing business with Metz and another large bakery in other states, and Metz and the other bakery asked if Dext could not take the waste from their St. Paul facilities as well.

5 The principal method for a bakery to dispose of its waste is by landfilling. This is becoming increasingly expensive. As discussed more fully in the Memorandum, the legislature has declared the policy of the State

to be one of favoring recycling and reuse of materials, and disfavoring landfilling. Ramsey County's Public Health Department, Division of Solid Waste has commended the company for handling the material in a manner consistent with the solid waste management hierarchy of the State and Ramsey County. Ex. 39.

6. If the waste product currently handled by Dext were landfilled, it would cost in the range of \$350,000 - 400,000 per year. The exact price will depend on the location of the generator, the location of the landfill, and a number of other variables. Tipping fees, for example, can vary substantially from landfill to landfill, and some may charge high costs for organic wastes. But the sheer volume of 150-200 tons per week dictates that the cost will be substantial at any landfill. The trend of landfill costs over the past five years has been sharply upward.

Location and Operation of the Dext Facility

7. Dext has only one facility in the Twin Cities area. It is located at 464 Topping Street, which is at the corner of Topping and Arundel, in the Como-Frogtown neighborhood. It is located in an area zoned 1-2 and is across Topping Street from the City asphalt and road oil plant. The building is owned by a pallet salvage company. A portion is leased to Twin City Sanitation, a licensed rubbish hauler, for storage of garbage trucks and other equipment. Another portion of the building is used for storage of fair equipment. Dext occupies yet another portion of the building.

8 The building is a prefabricated metal-sided warehouse structure with a concrete floor. It is rectangular, being substantially longer on one side than another. The long side of the building faces Topping Street, while the short side faces Arundel. On the long side of the building, roughly in the center, is a large door which will permit the entrance of trucks. On the short side of the building, facing Arundel, is another large door which will allow for the entrance of trucks, as well as a small "person-sized" door. It is these two door facing Arundel Street that are used by Dext. As noted earlier, the City asphalt plant is to the north of the building, across

Topping Street. To the west of the City asphalt plant, but also directly across Topping Street from the facility, are several residences. To the east of the building, across Arundel Street, and directly across from the entrances used by Dext, is an industrial area apparently owned or used by the City. The area is depicted on aerial photographs in the record as Exhibits 24 and 25. A review of the photographs demonstrates that the area around the facility is primarily industrial and commercial rather than residential.

9. Dext was first asked to consider the Twin Cities area approximately two years ago. During the fall of 1990, it began negotiating in earnest with bakerien and other potential clients, and also began looking for a facility. In late December, it entered into a lease at Topping Street which took effect on January 1, 1991. The lease is for a term of three years, with a option for an additional two years. In addition, Dext has an option to buy the entire building. Dext subsequently invested approximately \$35,000 in building modifications, including the erection of a U-shaped, three-sided metal enclosure inside the building. This consists of three metal plates, configured in a U-shape. The plates are approximately ten feet high. They are affixed to the building so that it is possible for the front-end loader to

push the dough product against the metal plates without dislodging them. These plates are depicted in a photograph, Ex. 22. In addition to the metal enclosure, Dext has also installed lights and a water line, both at the direction of the City. Dext has also installed a new concrete driveway apron, roughly 11' x 50', also at the direction of the City. Ex. 35.

City Concerns

10. It is not necessary at this stage to go into a detailed chronological history of the contacts between the City and Dext. Suffice it to say that in Match of 1991, Dext officials in California gained the impression that City licensure was assured if Dext satisfied the City's concerns about (1) water service, (2) lighting, (3) a new concrete driveway apron, and (4) quick turn-over of product in the building. City officials, on the other hand, were (and still are) uncertain of just how to license this unique facility, and Division of Public Health personnel were still attempting to assess the potential for rodent infestation, odor problems, and wash water removal. Communication problems occurred because Dext decisionmakers were in California, rather than local, whereas some critical pieces of the City licensing apparatus assume in-person contact. The upshot of the miscommunications was that Dext began test runs, and then full-scale operations, before any license was actually issued. By the time this was discovered and the City had ordered Dext to terminate, Dext's customers had made various physical and operational alterations which made it extremely costly and embarrassing for Dext to cease removing their waste product. A series of meetings occurred between Dext and the City, and various proposals were made. Nothing could we agreed upon, however, and so criminal citations were issued and it was determined to proceed to a hearing to sort out the facts and the law.

11. In order to bring the matter to a head, Dext applied for a food salvage processing plant license on June 27, 1991. Dext requested immediate action on the application, stating that if the license could not be granted, it would request a hearing. Ex. 15. The License Inspector recommended denial of the application, and, on July 10, 1991, a Notice of Hearing issued, setting the hearing in this matter for July 23. The Notice asserted that the recommended denial was based upon Dext's continued operations without a license

Status of the Proceeding

12 The hearing was recessed before it was completed, as is explained move fully in the Memorandum. Therefore, these Findings and Conclusions are not based upon a compete record. They are provided to the Council as background for its evaluation of the Recommendation. If the Council does not

accept the Recommendation, or if it modifies it to the extent that either of the paytien does not accept, then these Findings and Conclusions are of no force and effect and the matter must be remanded to the Hearing Examiner for completion. And of these Findings and Conclusions are thus subject to change, depending on the evidence produced at a reconvened hearing.

Based upon the foregoing Findings, the Hearing Examiner makes the following;

CONCLUSIONS

1. The City Council has jurisdiction over the subject matter of this proceeding,

2 Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law and the City's Legislative Code been fulfilled and, therefore, the matter is properly before the Hearing Examiner pursuant to Minn. Stat. 14.55 and Chapter 310 of the Code.

3. The City Legislative Code does not currently provide for any type of license which perfectly fits the operation proposed by Dext. Instead, the operation could be licensed under a number of different types of licenses, including a food salvage license (Chapter 374 of the City Code) as long as appropriate conditions were attached to the license to recognize the somewhat unusual nature of the proposed operation.

4. It is in the public interest to resolve disputes by tailoring a remedy to the individual dispute, particularly in a situation where the only rational way to license an operation under the City's licensing scheme would be to impose special conditions upon a license so as to properly reflect the actual Operations proposed by an applicant.

5. The conditions recommended below are within the range of reasonable outcomes of this proceeding considering the City's responsibilities to protect the public health and welfare of its citizens, to encourage recycling and reuse over landfilling, and to provide reasonable regulation of businesses operating within its boundaries.

6. The hearing in this matter was not completed. The City presented its entire case (with the exception of cross-examination and any rebuttal), but the Applicant did not present its entire case. The hearing was not consistent with due process because it was not completed. The hearing would be consistent with due process if the applicant was given an opportunity to complete the presentation of its evidence and the City was given an opportunity to cross-examine and rebut. Therefore, if the City Council does not resolve this matter consistent with the Recommendation below, then both parties must be given the option to have the case remanded to the Hearing Examiner for completion of the hearing. All Findings and Conclusions herein are subject to change depending upon the evidence and argument produced at any reconvened hearing. See Memorandum.

Based upon the foregoing, the Hearing Examiner respectfully recommends to the City Council that it resolve this matter consistent with the following:

RECOMMENDATION

I That a food salvage license be issued to Dext Company of Indiana, Conditioned upon the following terms, with these conditions to continue to be incorporated in renewals of the license, except for item E below which only needs to appear in the original license:

A. All Operation shall be conducted indoors-

for B. Licensee shall maintain in force at all times a contract with a
reputable firm for rodent, pest and vermin control which provides
such cleaning, baiting and traps as will control the problem.

C. Licensee shall use an effective system for the control of undesirable odors

D. Licensee shall provide restroom facilities and lockers for employees. The current facilities do satisfy thin condition.

E. Licensee shall pay a \$10,000 fine, suspended "or one year on condition of compliance with all City ordinances and with all the conditions of this settlement. In additi on, Licensee shall reimburse the City for the costs of this administrative law hearing, not to exceed \$500

F. Licensee shall construct a rodent-impervious four-sided enclosure, capable of being closed at night or such other times as

a company employee is not on the premises for an extended period of time, This enclosure shall be closed at night or such other time as

a company employee is not on the premises for an extended period of time. Prior to construction, Licensee shall submit plans for this enclosure to the license Inspector for his approval.

C. Licensee's premises, outside of the rodent-impervious enclosure, ;hall be cleaned on a daily basis.

Serious or repeated violations of any of the above terms, or a violati"n of the City's Legislative Code, shall be grounds for adverse action against the licenses held by Dext in St. Paul.

3 These terms shall be binding upon the Licensee, aid any transferee or successor company doing the same or similar operation on the premises for new licenses and any renewal thereof.

4. In the event that the City Council does not accept the terms of this Recommendation, or if it is modified, then the parties must be offered the opportunity for the matter to be returned to the Hearing Examiner for completion of the hearing.

Dated this 5th day of August, 1991.

as
Council
ALLAN W. KLEIN
Administrative Law Judge, serving
Hearing Examiner for the City

Reported: Tape Recorded 5 tapes

The City is respectfully requested to send a copy of its final decision in this matter to the Hearing Examiner.

MEMORANDUM

At the hearing, it became evident that the City was not necessarily opposed to the concept of the Dext facility. Instead, the City was insisting on assurances about rodent control, odor control and cleanliness of the driveway area. The City also had doubts about Dext's credibility in light of the ongoing violation. Dext, however, had already taken substantial measures to meet the City's concerns, including the hiring of Orkin Pest Control, the use of a commercial odor-masking compound and the adoption of procedures to deal with the cleaning problem. Moreover, testimony on the first day of the hearing offered an explanation for Dext's ongoing unlicensed activities.

At the suggestion of the Hearing Examiner, the parties identified various public policy goals, including the prevention of rodent and odor problems and the diversion of landfill refuse to recycling and reuse. They then fashioned a settlement which maximizes those goals while still providing the City with a "sword" to use in the event that the company does not live up to its promises. The Hearing Examiner has reviewed the settlement, has taken the opportunity to ask questions and receive clarifications, and believes that the settlement does promote a number of public policy objectives and is within the range of reasonableness. He therefore respectfully recommends to the Council that they accept it as a resolution of this matter.

A. W. K,